IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.276 OF 2002

Shri Surajbhan U. Agarwal. ... Petitioner
v/s.
Shri Santoshkumar Goel & ors. ... Respondents

Mr.V.P. Sawant with Mr.Y.R.Mehta for petitioner.

Mr.P.S.Dani for res.No.1.

Mr.S.R.Nargolkar, AGP for res.Nos.2 & 3.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 15th July 2005

P.C. :

1. Heard the learned Counsel for the parties.

2. This petition seeks to challenge the order dated 20th November 2001 passed by the Additional Commissioner, Pune Division, Pune, under Section 33 of the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the said Act"). The order is passed on the footing that respondent No.1 herein was being excluded when the return was filed under the said Act by the petitioner herein.

3. Mr.Sawant, learned Counsel appearing for the petitioner, relied upon a judgment of the Andhra Pradesh High Court in the case of **Vijayawada Urban Zilla Weaker Section and**

Economically Backward Classes Society vs. Dhulipalla Kishore Kumar & ors. reported in AIR 1996 Andhra Pradesh 80 which stated that if the return is filed on behalf of HUF and everybody was covered then some individual member of the HUF could not make any grievance in that behalf. Mr.Sawant, therefore, submitted that the Appellate Authority had no reason to interfere inasmuch as the return was on behalf of HUF.

4. Mr.Dani, learned Counsel appearing for respondent No.1, pointed out that though the return was initially filed by giving the names of all the members of the family in a subsequent statement filed by respondent No.1 herein, the name of the petitioner was excluded. He further pointed out that with respect to a parcel of land involved, the petitioner herein made different statements on different occasions. At one stage he stated that the land did not have an access whereas at another stage he submitted that it did have an access. Respondent No.1, therefore, feared being excluded in view of the attitude employed by the petitioner and, therefore, filed an Appeal against the original order.

5. Although the submission of Mr.Sawant has

some merit in law, in the facts of the present case, the petitioner cannot have advantage of the judgment referred to above inasmuch as he has tried to exclude respondent No.1 and, therefore, the Additional Commissioner was right in entertaining the Appeal. All that he has done is to revive the proceeding and sent it back to the Authority. We do not find any error in the order passed. Mr.Sawant raised the question of limitation. That also has been answered in the impugned order.

6. Petition is dismissed. The interim order stands vacated.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)